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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. JEFFREY STEPHEN PARENTEAU, JR., Appellant.	)	2 CA-CR 2007-0177 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20062152

Honorable Leslie Miller, Judge

AFFIRMED

David Allen Darby — Tucson
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Following a jury trial, Jeffrey Parenteau was convicted of aggravated assault with a deadly weapon or dangerous instrument. The trial court sentenced him to an aggravated term of fifteen years in prison, and Parenteau appealed. Counsel has filed a brief

in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), raising two arguable issues: (1) the trial court "may have erred" in denying Parenteau's motion for a judgment of acquittal, and (2) the trial court "may have erred in not *sua sponte* declaring a mistrial based on [Parenteau]'s acting out during the prosecutor's closing argument." Parenteau has not filed a supplemental brief. We affirm.

¶2 We view the evidence in the light most favorable to sustaining the convictions. *State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). Parenteau and the victim, friends at the time, had been drinking and playing pool at a bar. They left the bar to watch a movie at the victim's apartment. While there, Parenteau attacked the victim with a knife, stabbing him multiple times. After a struggle, the victim escaped by jumping through a closed window. He spent approximately a month in the hospital recovering from his injuries.

¶3 We review de novo a trial court's ruling on a motion for judgment of acquittal. *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993). A trial court should grant a judgment of acquittal only when "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a). "Substantial evidence is . . . such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990), *quoting State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980).

¶4 A person commits aggravated assault if he or she uses a deadly weapon to "[i]ntentionally, knowingly or recklessly" cause "any physical injury to another person." A.R.S. §§ 13-1203(A)(1), 13-1204(A)(2). The victim's testimony that Parenteau attacked and stabbed him with a knife constituted substantial evidence of the elements of the crime and necessitated the trial court's submission of the case to the jury. We find no error in the court's denial of the motion for judgment of acquittal.

¶5 We also find no error in the trial court's failure to grant a mistrial sua sponte. "The decision whether to grant a mistrial is left to the sound discretion of the trial court . . . ." *McLaughlin v. Fahringer*, 150 Ariz. 274, 277, 723 P.2d 92, 95 (1986). "A declaration of a mistrial is the most dramatic remedy for trial error and should be granted only when it appears that justice will be thwarted unless the jury is discharged and a new trial granted." *State v. Adamson*, 136 Ariz. 250, 262, 665 P.2d 972, 984 (1983). "Absent fundamental error, a defendant cannot complain if the court fails . . . to sua sponte order a mistrial." *State v. Ellison*, 213 Ariz. 116, ¶ 61, 140 P.3d 899, 916 (2006).[1] But "we will not find reversible error when the party complaining of it invited the error." *State v. Logan*, 200 Ariz. 564, ¶ 9, 30 P.3d 631, 632-33 (2001).

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[1]Fundamental error is "'error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial.'" *State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005), *quoting State v. Hunter*, 142 Ariz. 88, 90, 688 P.2d 980, 982 (1984).

¶6 During the prosecutor's closing argument, Parenteau stood up and apparently attempted to show the jury something in response to the prosecutor's statement that Parenteau had suffered only an injury to his hand. Defense counsel "quickly told him to sit down, and he did." The trial court immediately instructed the jury "to disregard any movements or attempted demonstration by [Parenteau] during the closing arguments." The court appropriately handled the situation. Nothing in the record suggests Parenteau received less than a fair trial because of his actions, and if any prejudice resulted, it was self-inflicted.

¶7 Having reviewed the record in its entirety pursuant to our obligation under *Anders*, 386 U.S. at 744, and having found no fundamental error, we affirm Parenteau's conviction and sentence.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge